

United States District Court

for the
Western District of New York

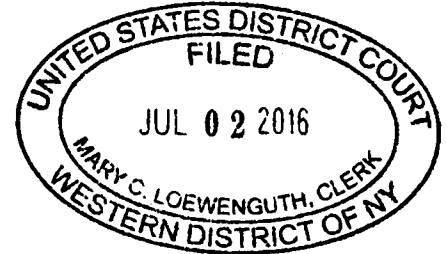
United States of America

v.

Case No. 16-M-92

KEVIN JAMES FOX

Defendant



CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

From on or about June 10, 2016, to on or about June 21, 2016, in the Western District of New York, the defendant, KEVIN JAMES FOX, did: (1) knowingly use, persuade, induce, entice and coerce a minor, that is, Child Victim, to engage in sexually explicit conduct for the purpose of producing a visual depiction of such sexually explicit conduct, which visual depiction was produced using materials that had been mailed, shipped, and transported in and affecting interstate and foreign commerce by any means, including by computer; and (2) using any means and facility of interstate and foreign commerce, knowingly receive child pornography, as defined in Title 18, United States Code, Section 2256(8), which child pornography had been shipped and transported in and affecting interstate and foreign commerce by any means, including by computer;

all in violation of Title 18, United States Code, Sections 2251(a) and 2; and 2252A(a)(2)(A).

This Criminal Complaint is based on these facts:

☒ Continued on the attached sheet.


Complainant's signature

Brent S. Isaacson, Special Agent, FBI
Printed name and title

Sworn to before me and signed in my presence.

Date: July 2, 2016


Judge's signature

City and State: Buffalo, New York

HON. H KENNETH SCHROEDER, JR., USMJ
Printed name and title

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

I, Brent S. Isaacson, being duly sworn, depose and say:

1. I am a Special Agent of the Federal Bureau of Investigation (FBI) and have been so employed for nearly 20 years. I am assigned to the Jamestown Resident Agency of the FBI which is a part of the Buffalo Division of the FBI. In my career as an FBI Special Agent, I have investigated many federal crimes, including those involving the sexual exploitation of children. As a part of my official duties, I investigate violations of federal criminal law, including statutes which prohibit the production, distribution, and possession of child pornography.

2. I make this affidavit in support of a criminal complaint charging KEVIN JAMES FOX ("FOX") with violations of Title 18, United States Code, Sections 2251(a) [production of child pornography] and 2252A(a)(2)(A) [receipt of child pornography].

3. The information contained in this affidavit are based upon my personal participation in this investigation, information provided to me by other law enforcement officers involved in this investigation, and upon my training and experience. Because this affidavit is being submitted for the limited purpose of seeking a criminal complaint, I have not included each and every fact known to me concerning this investigation. I have set forth only the facts that I believe are necessary to establish probable cause to believe that FOX

violated Title 18, United States Code, Sections 2251(a) [production of child pornography] and 2252A(a)(2)(A) [receipt of child pornography].

I. INVESTIGATION AND FACTUAL BASIS

4. On June 23, 2016, an investigator of the Cattaraugus County Sheriff's Office ("CCSO") was contacted by a mental health professional who advised that a 48-year-old woman (whose identity is known to your affiant and who will hereinafter be referred to as "Adult Victim") had disclosed that she had been coerced into having and photographing sexual contact with her 17-year-old biological child (whose identity is known to your affiant and who will hereinafter be referred to as "Child Victim"). Adult Victim further disclosed that she had been receiving a large number of text messages on her cellular telephone which appeared to originate from several different cellular telephone numbers. According to Adult Victim, the text messages made her believe that she, her boyfriend FOX, and Child Victim were in danger of being assaulted by members of organized crime. Adult Victim was made to believe that the only way to avoid being targeted was for Adult Victim to engage in explicit sexual conduct with Child Victim and electronically send photographs of the conduct to the members of organized crime.

5. In response to this allegation, the CCSO interviewed Adult Victim and arranged for Child Victim to be interviewed at the Child Advocacy Center in Olean, New York. During the interview of Adult Victim, she stated that she has had a sexual relationship with FOX for about seven years. In recent weeks, Adult Victim has received

hundreds of text messages from several different telephone numbers. These numerous text messages from many telephone numbers created a running text conversation among Adult Victim and several other personas that was accepted as genuine by Adult Victim. In sum and substance, Adult Victim came to believe that a woman named "Nicole" was an ex-girlfriend of FOX. "Nicole" discussed her desire to have group sexual encounters that included Nicole, Adult Victim, FOX, and other individuals. "Nicole," through many text messages, was persistent in requesting explicit sexual encounters with Adult Victim and others. The persistent requests for sexual conduct by "Nicole" became a nuisance to Adult Victim over time, and another person, "Robert" texted Adult Victim to ask whether Adult Victim wanted "Nicole" to cease contacting Adult Victim. Adult Victim said yes. Soon thereafter, FOX told Adult Victim via text message that "Nicole" had been badly beaten and was in a coma. FOX asked Adult Victim whether she had asked for a "hit" on Nicole, and Adult Victim denied having asked for a "hit" on "Nicole." "Robert" in subsequent text messages to Adult Victim reinforced the notion that "Nicole" had been assaulted. Through numerous text messages from many different telephone numbers, Adult Victim came to believe that organized crime had assaulted "Nicole" based on a request by Adult Victim that "Nicole" cease making sexual requests via text. Adult Victim also came to believe that both she and FOX were now indebted to organized crime.

6. Adult Victim was told through many text messages from many telephone numbers that she was now in debt to organized crime. She was requested by the sender(s) of the text messages to repay the debt by having and photographing sexual encounters

between Adult Victim and other men. She was ultimately told that she must repay the debt by having and photographing sexual conduct between Adult Victim and Child Victim. Adult Victim stated that she believed that she, Child Victim, and FOX were in grave danger from organized crime and that the only way to prevent harm coming to them was to acquiesce to the demands of the organized crime members.

7. As a result, Adult Victim told her child, Child Victim, about the danger posed by the organized crime members and about their demands that she photograph sexual contact between her and Child Victim. According to Adult Victim, this generated a similar fear of the organized crime members in Child Victim's mind. On at least two occasions in June 2016, Adult Victim had sexual contact with Child Victim, and photographs of this sexual activity were transmitted electronically via text messages by Adult Victim to phone numbers Adult Victim believed belonged to members of organized crime.

8. Child Victim made disclosures during a videotaped interview at the Child Advocacy Center that were consistent with Adult Victim's disclosures to law enforcement. Child Victim corroborated the sexual contact with Adult Victim and the fear that Child Victim had toward the members of organized crime. Child Victim stated that on one occasion during which Child Victim and Adult Victim were engaging in explicit sexual conduct, Adult Victim was using the Skype application on a tablet computer to transmit live video of the sexual conduct to FOX. Child Victim could see on the tablet's screen that FOX was on the other end of the live video connection.

9. Adult Victim was hospitalized for several days for a mental health evaluation after making the above disclosures to law enforcement. Child Victim has been provided psychological trauma counseling by the Child Advocacy Center.

10. During interviews with law enforcement, Adult Victim gave her consent for law enforcement to search her cellular telephone and to assume her identity using her telephone to communicate with FOX and others while posing as Adult Victim in an undercover capacity.

11. The CCSO and the FBI conducted forensic reviews of the cellular telephone used by Adult Victim. The data gleaned from Adult Victim's telephone closely corroborate the allegations made by Adult Victim. The review showed that Adult Victim received approximately 1,000 text messages from several different telephone numbers, most from area codes outside of the 716 area code where Adult Victim resides, from June 9, 2016, to June 22, 2016. The content of these text messages indicates that Adult Victim was being directed by the sender(s) of the texts to perform sexual acts with other adult men and also perform sexual acts with Child Victim. Adult Victim indicated that she was hopeful that acquiescing to the demands of producing images of her sexual contact with Child Victim would satisfy her debt to the organized crime members. The following is a text exchange on June 9, 2016, in which Adult Victim is told to produce images of sexual contact with Child Victim. Typographical, grammatical, and capitalization errors are included.

XXX-XXX-7185: Do not tell Kevin about this

XXX-XXX-7185: And you agree correct

Adult Victim: It has to be with two different guys or just one?

XXX-XXX-7185: You either have to do two guys tonight or pose for the pictures

Adult Victim: Two guys is going to be hard to do seeing I work til 1...

XXX-XXX-7185: You didn't answer about the two guys so now it's posing for the pictures

XXX-XXX-7185: Here is a list of pictures to send. his dick in your hand your tits in his. Your head between his legs and his between yours. You on top of him him on top of you both on your back and stomach. You bent over him behind you. Make sure they look real.

Adult Victim: Two guys would have been too hard to pull off tonight..even the pics are gonna be hard...

XXX-XXX-7185: I am just making you make it look real so do a good job of it

XXX-XXX-7185: But you both need to be naked so it looks real

Adult victim: I just hope I can find someone to get this done...I want all of this over with once and for all and so Kevin is safe as well...

XXX-XXX-7185: Understand

XXX-XXX-7185: What do you mean find

XXX-XXX-7185: This has to be done at home tonight

Adult Victim: With [Victim Child] you mean??!!!

XXX-XXX-7185: That's why I am going to let you two pose together

XXX-XXX-7185: You don't actually have to do the act just make it look like you are

Adult Victim: And then this is over with for good...nothing more...nothing

held over my head anymore?

XXX-XXX-7185: Yes but it has to look real

Adult Victim: Alright

12. During the morning hours of June 10, 2016, Adult Victim sent several photographs via text message attachments to telephone number XXX-XXX-7185 depicting her and Child Victim engaging in oral and anal intercourse. I have reviewed these images and have concluded that they constitute child pornography.

13. In the early morning hours of June 21, 2016, Adult Victim received text messages from a person utilizing telephone number XXX-XXX-1182 wherein she was directed to have sexual contact with Child Victim and send additional photographs to the unknown person. Adult Victim protested, stating “[Child Victim] told me something really sad...this really needs to be over with tonight and the best I’m going to be able to get him to do is for me to do the blowjob now ..he’s not going to be able to do anything else.” The person responded “then you two will do everything there is...fucking sucking and licking your pussy and fist you to...and then he is going to give you a shower.” Adult Victim asked the person, “then it’s over with right?” and the unknown person replied, “if you do everything.” Adult Victim acknowledged her agreement to have the sexual contact with Child Victim and send images depicting the sexual contact to the person.

14. A few hours later, Adult Victim sent several images to XXX-XXX-1182

which showed explicit sexual contact between Adult Victim and Child Victim. Included in these images were Adult Victim nude in a bath tub being urinated upon. Also depicted are photographs of oral sex between Adult Victim and Child Victim and a photograph that appears to be Child Victim's entire hand placed inside Adult Victim's vagina. I have reviewed these images and have concluded that they constitute child pornography.

15. Later in the day on June 21, 2016, Adult Victim received many text messages with two numbers, one belonging to FOX (XXX-XXX-0899) and one belonging to an unknown person (XXX-XXX-1182). In sum and substance, the sender(s) of the texts originating from both telephone numbers indicated that Adult Victim should make and send additional pornographic images showing sexual contact between her and Child Victim. FOX stated, "No I don't understand why you are so beat up about it is all...big fucking deal you two had sex wow that is so painful." The unknown person using XXX-XXX-1182 stated, "line up at least two of your son's friends to join the two of you tonight. I don't care how you do it but it must be Skype." The Adult Victim protested, stating "I cannot do [Child Victim] again let alone his friends considering they are out of town have girlfriends and I'm not ruining another relationship again...and [Child Victim] cannot deal with this yet again and will not do it again...last night was the end of it for him."

16. On June 29, 2016, a law enforcement officer posed as Adult Victim by using her cellular telephone to have a text message conversation with FOX. During this exchange, FOX admitted that he created a ruse with the intent to coerce Adult Victim into

having sexual contact with Child Victim, take photographs of the sexual contact, and send the photographs to FOX. FOX admitted that he created additional phone numbers and false personas to deceive Adult Victim into believing her and Child Victim were in danger from organized crime. FOX stated via text messages that he "made up everything there...there you have it...I'm the one who made you do all the terrible things...I am the one that you were talking to all the time...I am the one." FOX admitted that the persons with whom Adult Victim had communicated were, in fact, FOX posing as various people using different telephone numbers. FOX stated that he used his cellular telephone and a technique which he described as "Star 811" to change the number of his cellular telephone as he was texting with Adult Victim. He also admitted that he had received the images depicting the sexual contact between Adult Victim and Child Victim and that no other people had received those images.

17. Adult Victim's cellular telephone was made in China. Included in Adult Victim's cellular telephone are text messages directing Adult Victim to send video to FOX's Skype address, kjfox123.

18. On July 1, 2016, Detective Sergeant Mark Crosson of the CCSO and I interviewed FOX at his place of employment, the Seneca Allegany Casino in Salamanca, New York. FOX is employed as a security official at the casino. The interview was non-custodial. Detective Sergeant Crosson and I asked FOX for some of his time and advised FOX that we would leave at the end of the conversation because we knew it was a busy

night at the casino with Fourth of July events. FOX agreed to speak with Detective Crosson and me, and the conversation took place in FOX's supervisor's office in private.

19. FOX stated that the texts that were received by Adult Victim were "smoke and mirrors" and not true. In particular, he stated that he used three telephone applications or "apps" – TextFree, TextNow, and TextMe – which allowed FOX to create several telephone numbers from which he could send and receive texts from Adult Victim. He stated that by using multiple numbers, he was able to create the illusion in Adult Victim's mind that she was now involved with the mob. FOX admitted that he used this ruse for the purpose of manipulating Adult Victim into performing and photographing sexual acts with Child Victim and then taking photographs of this sexual activity to send to FOX. FOX stated that his motives to do this were both for his sexual gratification and because he was angry with Adult Victim. FOX was angry with Adult Victim because she was unfaithful in her relationship with FOX.

20. FOX was shown hard copy prints of the child pornography images law enforcement discovered on Adult Victim's cellular telephone. FOX stated that he recognized these child pornography images as those he received from Adult Victim as a result of pressuring Adult Victim with the ruse about the mob. While he was reviewing the images, FOX made handwritten notations on the hard copy prints of the images to indicate which photographs included Adult Victim engaged in sexual contact with Child Victim.

21. FOX stated that at the time he pressured Adult Victim into having sexual contact with Child Victim, FOX knew that Child Victim had recently reached his 17th birthday.

22. During the course of the interview, Detective Sergeant Crosson and I asked FOX whether he would be willing to complete a written statement to summarize the information he provided. He agreed to do so. The text of this statement follows, verbatim:

Time: July 1, 2016
7:00 p.m.

I, Kevin James Fox, Sr., wish to provide the following voluntary statement to Detective Sergeant Mark Crosson and FBI Special Agent Brent S. Isaacson. I understand that I am not under arrest. I am giving this statement freely, and no promises or threats have been made to me.

I have had an 8 year long relationship with [Adult Victim]. In approximately mid April, [Adult Victim] and I had a falling out of sorts. I became angry with [Adult Victim] at some point. I decided to create a fictitious (sic) story about the mob. To do so, I created several phone numbers, I posed as various people including Robert, Mary, Cheryl, Kristen, and Nicole. I wrote text messages to [Adult Victim] to make her believe she was now involved with the mob. I pressured her to have various types of sexual relationships. In recent weeks, I pressure her to have sexual contact with her son, [Child Victim]. I knew that [Child Victim] had just turned 17 year old. I suggested certain sexual act be performed between [Adult Victim] and [Child Victim]. [Adult Victim] and [Child Victim] did perform those sexual acts. At my direction, [Adult Victim] transmitted photographs of sexual acts between her and [Child Victim] to my cell phone and iPad. I received those images. At this interview, I was shown hard copy photographs. These are

some of the images I received from [Adult Victim]. I made handwritten notations on these hardcopy photographs to identify the males in the pictures. Some of these pictures included [Child Victim]. The only devices I used are the cell phone and the iPad. I factory reset these devices before today. I never shared these images with anyone else. The accounts I used to create cell phone numbers and through which I communicated with [Adult Victim] and received these images have been deleted by me before today. I did this to make sure the images would not be further distributed. The cell phone apps I used are Textfree, Textnow, and Textme.

I feel great regret for doing this. I will never do it again.

I have been given an opportunity to review this statement and make any changes I wish. This statement is true and accurate. I gave this statement voluntarily, and I have not been threatened or promised anything. The detective and agent have been friendly and professional with me today. This statement is 3 pages long.

//Kevin J. Fox//

//Mark Crosson//

//Brent S. Isaacson//

23. At the conclusion of the interview, the investigators shook FOX's hand, thanked him for his time, and departed the property of the Seneca Allegany Casino.


II. CONCLUSION

24. Based upon the above information, I respectfully submit that I have probable cause to believe that KEVIN JAMES FOX has violated Title 18, United States Code, Sections 2251(a) [production of child pornography] and 2252A(a)(2)(A) [receipt of child pornography].



Brent S. Isaacson, Special Agent
Federal Bureau of Investigation

Sworn to before me this 2nd day of
July, 2016



HON. H. KENNETH SCHROEDER, JR.
United States Magistrate Judge